

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

INITIAL STATEMENT OF REASONS

July 15, 2005

RH-03028690

**PROPOSED AMENDMENTS TO THE PRELICENSING AND
CONTINUING EDUCATION CURRICULUM REGULATIONS**

INTRODUCTION

Pursuant to California Insurance Code Section 1749.7, California Insurance Commissioner John Garamendi ("Commissioner") proposes amendments to California Code of Regulations, Title 10, Chapter 5, Subchapter 1, Article 6.5, entitled "Prelicensing and Continuing Education". The original regulations, effective May 17, 1993, were promulgated to provide specific prelicensing and continuing education curriculum requirements to potential and existing licensees and education providers for compliance with the California Insurance Code's prelicensing and continuing education statutes, Sections 1749 et seq. These regulations were amended effective September 1996 and in 2002 (amendment of Section 2186.1 [heading and paragraph (f)(1)]). After working with the amended regulations for many years, it has become apparent that additional modifications are necessary:

- 1) Approval of combination courses for continuing education credit for life agents, fire and casualty broker-agents, and/or personal lines broker-agent licensees.
- 2) Adding a mandatory ethics requirement to the continuing education curriculum for life agents, fire and casualty broker-agents, and/or personal lines broker-agent licensees.
- 3) Adding requirements that prelicensing rosters must be submitted within ten (10) business days of completion of the course and course rosters must be submitted through an electronic filing method.
- 4) Adding or deleting language for reasons of grammar or clarity.
- 5) Reorganizing the subsections so that they are easier to understand and use.

Life agent and/or a fire and casualty broker-agent and personal lines broker-agent licensees are required to complete continuing education hours approved by the Commissioner during each renewal period. Currently courses are limited to either contact or non-contact (self-study) formats. Due to advances in technology since these regulations were originally adopted, there is now an opportunity for new combination course formats such as instructor-led, on-line courses and Web-based conferences. The existing regulations prohibit approval of combination courses (contact and self-study combined) for continuing education credit.

In December 2002, the National Association of Insurance Commissioners (NAIC) adopted Uniform Resident Licensing Standards including standards for continuing education requirements. The NAIC standard requires twenty-four hours of continuing education for all lines of authority with three (3) of the twenty-four hours covering ethics. Therefore, to ensure that California's continuing education standards equal or exceed the national standard, the proposed amendments, which include an ethics requirement, are necessary. These regulations would mandate these changes and have been approved by the Curriculum Board of the Department of Insurance. It is necessary to the Department's purpose of ensuring that life agents, fire and casualty broker-agents, and personal lines broker-agent licensees continue to be educated in matters that deal with individual character and personal characteristics such as honesty, integrity, and professionalism in the insurance industry. Existing law requires that education providers submit to the Department rosters of students given a certificate of completion within thirty (30) days of course completion and that a roster be submitted on a Provider Roster form, or other form meeting certain requirements. With the Department's activation of its online application and many of the Department's functions becoming automated, the receipt of the Prelicensing Rosters facilitates the amended regulation's requirement to submit rosters electronically. The new ten (10) day requirement will eliminate the student's requirement to bring or mail in their Prelicensing Certificates, which, in turn, will allow the Department to issue an applicant's license sooner. The intent in shortening the reporting period for prelicensing education is to move to a paperless system using the Online Application, which will allow more accurate information to be collected. In the paperless process, the submission of the online roster will assist those students who pass the qualifying examination in a timely manner by having the prelicense roster information on file. A thirty (30) day period to report prelicensing rosters may hold up the issuance of the license. The programs are already in place and are currently being used by many education providers. Providers can manually key the rosters using the Education Provider Online Program available on the Department's Web site with a user ID and password.

These amendments will only occur after the Commissioner considers all comments, objections, and recommendations regarding the proposed regulations. If adopted the regulations will amend Title 10, Chapter 5, Subchapter 1, Article 6.5, sections 2186.1, 2188.2, 2188.6, and 2188.8 of the California Code of Regulations.

SPECIFIC PURPOSE AND REASONABLE NECESSITY OF REGULATION:

The specific purpose of each adoption, amendment, or repeal and the rationale for the Commissioner's determination that each adoption, amendment or repeal is reasonably necessary to carry out the purpose for which it is proposed is set forth below.

Section 2186.1. Definitions.

Section 2186.1(a)

Existing 2186.1(a) includes "trade school" in the definition of "provider". This subdivision has been amended to delete the phrase "trade school" which is necessary to make it consistent with the entities set forth in California Insurance Code Section 1749.4. The change to include Sections 1749.31 and 1749.8 is necessary to reflect the more recent enactment of personal lines broker-agent continuing

education requirements to the California Insurance Code, as well as training requirements for life agents selling annuities. The change to include Section 10234.93(a)(4) is necessary because of the training requirements set forth for selling long-term care insurance. Additional language and punctuation changes have been made for clarification purposes.

Section 2186.1(b)

Existing 2186.1(b) defines “provider director”. The change to include Sections 1749.31 and 1749.8 is necessary to reflect the more recent enactment of personal lines broker-agent continuing education requirements to the California Insurance Code, as well as training requirements for life agents selling annuities. The change to include Section 10234.93(a)(4) is necessary because of the training requirements set forth for selling long-term care insurance. Additional language and punctuation changes have been made for clarification purposes.

Section 2186.1(d)

Additional language and punctuation changes have been made for clarification purposes.

Section 2186.1(f)(2)

The change to include Section 1749.31 is necessary to reflect the more recent enactment of personal lines broker-agent continuing education requirements to the California Insurance Code, as well as training requirements for life agents selling annuities. The change to include Section 10234.93(a)(4) is necessary because of the training requirements set forth for selling long-term care insurance. The word “and” has been added for clarification purposes.

Section 2186.1(g)(2)

Existing 2186.1(g)(2) has been amended to include “internet chat rooms, or other electronic devices to accommodate technological changes” in the definition of “classroom” for continuing education courses. This change is necessary to expand the definition of “classroom” to include the results of technological changes and advancements in our society since these regulations were originally adopted. Additionally, a punctuation change has been made for clarity.

Section 2186.1(h)

The change to include Section 1749.31 is necessary to reflect the more recent enactment of personal lines broker-agent continuing education requirements to the California Insurance Code, as well as training requirements for life agents selling annuities. The change to include Section 10234.93(a)(4) is necessary because of the training requirements set forth for selling long-term care insurance. A punctuation change has been made and the word “and” has been added for clarification purposes.

Section 2186.1(h)(3)

Section 2186.1(h)(3) has been adopted to expand the definition of “course” to include a “combination

course”. A “combination course” is a course that includes both self-directed and contact course requirements to total a minimum of three continuing education hours. The addition of a combination course is necessary because of advances in technology, which has resulted in an opportunity for new combination course formats such as instructor led, on-line courses, and Web based conferences for continuing education. The “total minimum of three (3) continuing education hours” is necessary for consistency. Furthermore, it is mandatory for the student to complete the self-directed portion prior to completing the contact course portion of the course. This is to prevent the instructor from conveying the answers to the correspondence exam. In addition, the completion of the self-study prior to the contact course will prevent a student from asking the instructor the answers to the correspondence examination questions. Finally, the provider will determine successful completion in the same manner as described in Sections 2188.6(c), (d) and (e). This language is added for consistency that successful completion of combination course will be determined using the same standards as other continuing education course.

Section 2186.1(i)

Language is added that the Commissioner reserves the right to reduce the hours requested if the course fails to meet all of the criteria set forth in these regulations. Hypothetically, if the correspondence portion of a course was identical to the instructor-led portion of the course, the Commissioner would have the right to reduce the hours requested. The change is necessary because of the importance of adhering to specific course approval requirements of Section 2188.2.

Section 2186.1(k)

The phrase “[o]riginal signature” has been changed to “[s]ignature” and divided into “[o]riginal signature” and “[e]lectronic signature”, as explained in 2186.1(k)(1)(2) below. This change is necessary to accommodate technological advances and increased use of computers since the time these regulations were originally adopted. The second sentence is added and is necessary so that these regulations will not have to be amended in the future if a new type of signature evolves because of technological advances.

Section 2186.1(k)(1)

Minor changes have been made to correct punctuation, to correct a typographical error and for consistency purposes.

Section 2186.1(k)(2)

The definition of “[e]lectronic signature” has been included and is necessary to accommodate technological advances and increased use of computers since the time these regulations were originally adopted. Assigned student’s log-in/log-out number is the computer’s address that monitors the time and attendance of each student. The education provider must record the times that each student logged-in and logged-out (time attendance) in lieu of the paper sign-in/sign-out attendance sheet. Education providers who are currently using this process in other states have presented this method to the department’s Curriculum Board. This is necessary to make sure that students are actually complying with the time requirements of the courses.

Section 2186.1(l)

A requirement of electronic filing, which is the method which the education provider submits the course rosters and class presentation schedules, has been added. The electric filing methods include, but are not limited to, the California Department of Insurance's Web site, electronic flat file, diskette, compact diskette (CD), or digital versatile disc (DVD). The change is necessary because of the technological advances that have been made since these regulations were originally adopted. With the Department's activation of its online application and many of the Department's functions becoming automated, the submission of course rosters and schedules via electronic filing helps to facilitate the move to a paperless system.

NOTE: Section 2186.1

California Insurance Code Sections 1749.31, 1749.8 and 10234.93(a)(4) have been added as reference. The change to include Sections 1749.31 and 1749.8 is necessary to reflect the more recent enactment of personal lines broker-agent continuing education requirements to the California Insurance Code, as well as training requirements for life agents selling annuities. The change to include Section 10234.93(a)(4) is necessary because of the training requirements set forth for selling long-term care insurance.

Section 2188.2. Course Approval.

Section 2188.2(a)

The revision date of Form 446-3, incorporated by reference, has been changed from 4/95 to 5/04. This change is necessary to accurately reflect the latest revision date and for consistency.

Section 2188.2(a)(3)

A minor change has been made for consistency.

Section 2188.2(b)

The revision date of Form 446-12, incorporated by reference, has been changed from 4/95 to 11/01. This change is necessary to accurately reflect the latest revision date and for consistency.

Section 2188.2(c)

Minor changes have been made for consistency.

Section 2188.2(f)

A minor change has been made for consistency.

Section 2188.2(g)

A minor change has been made for consistency.

Section 2188.2(h)

The revision date of Form 446-12, incorporated by reference, has been changed from 4/95 to 11/01. This change is necessary to accurately reflect the latest revision date and for consistency. Another minor change has been made for consistency purposes.

Section 2188.2(i)

A minor change has been made for consistency.

Section 2188.2(l)

Previously, a combination course did not qualify for continuing education credit. Because of the expansion of Section 2186.1(h) to include combination courses as a permissible course it is necessary to re-word Section 2188.2(l) to include contact and self-directed courses (combination courses) in defining what course subjects will not qualify for course approval.

Section 2188.2(m)

Subdivision (m) of Section 2188.2 has been added to state that combination courses having identical content in both the self-directed and contact portions of the course may not be approved or may be subject to a reduction in requested hours. This is necessary because this could be a way for the student to take a short cut with respect to mandatory continuing education hours. Language for a reduction in requested hours is necessary for fairness. Hypothetically, if the correspondence portion and the instructor portion of the course were identical, the student would receive credit for only the portion of the course that provides the most credit to the student.

Section 2188.2(n)

Existing 2188.2(m) has been re-lettered and is now designated as subsection 2188.2(n). This minor change is necessary to maintain consistency.

Section 2188.2(o)

Existing 2188.2(n) has been re-lettered and is now designated as subsection 2188.2(o). This minor change is necessary to maintain consistency.

Section 2188.2(p)

Existing 2188.2(o) has been re-lettered and is now designated as subsection 2188.2(p). This minor

change is necessary to maintain consistency.

Section 2188.2(q)

Existing 2188.2(p) has been re-lettered and is now designated as subsection 2188.2(q). This minor change is necessary to maintain consistency.

NOTE: Section 2188.2

Existing law mistakenly does not state a note citing authority and reference. It is necessary that California Insurance Code Section 1749.7 is added as authority that the commissioner may adopt reasonable rules and regulations necessary for the convenient administration of this article. It is also necessary to cite Insurance Code Sections 1749.2 to 1749.6 as reference for the regulations.

Section 2188.6. Successful Completion of Continuing Education Courses.

Section 2188.6(d)

The word “California” has been added before the words “Insurance Code” in order to correct an inadvertent omission from the text of the regulations as originally promulgated. The change is necessary for grammatical and stylistic reasons.

Section 2188.6(h)(1)

This paragraph is added setting forth the requirement that life agents and/or a fire and casualty broker-agents as part of, and not in addition to, the continuing education requirements pursuant to Section 1749.3 shall complete ethics courses, programs of instruction, or seminars. Such ethics courses, programs of instruction, or seminars must follow a prescribed outline and be approved by the Commissioner. Furthermore, the minimum number of hours required on ethics for such licensees is four (4) hours per license term.

This addition is necessary to ensure that California’s continuing education standards equal or exceed the national standard of the NAIC. Furthermore, the language is necessary to the Department’s purpose of ensuring that life agents, fire and casualty broker-agents, and personal lines broker-agent licensees continue to be educated in matters that deal with individual character and personal characteristics such as honesty, integrity and professionalism in the insurance industry.

Section 2188.6(i)(1)

This paragraph is added setting forth the requirement that personal lines broker-agents shall complete ethics courses, programs of instruction, or seminars as part of, and not in addition to, the continuing education requirements pursuant to Section 1749.31. Such ethics courses, programs of instruction, or seminars must follow a prescribed outline and be approved by the Commissioner. Furthermore, the minimum number of hours required on ethics for such

licensees is two (2) hours per license term. The difference in hours of ethics training for the two licenses is that a life agent and fire and casualty broker-agent is required to complete thirty (30) hours of continuing education for each license term (two-year period) whereas a personal lines broker agent is required to complete twenty (20) hours of continuing education for each license term (two-year period). With less continuing education required for the personal lines broker-agent, the Curriculum Board agreed to require the personal lines broker-agent to complete one-half of the life agent and fire and casualty broker-agent's ethics training requirement.

This addition is necessary to ensure that California's continuing education standards equal or exceed the national standard of the NAIC. Furthermore, the language is necessary to the Department's purpose of ensuring that life agents, fire and casualty broker-agents, and personal lines broker-agent licensees continue to be educated in matters that deal with individual character and personal characteristics such as honesty, integrity, and professionalism in the insurance industry.

Section 2188.6(j)

This paragraph has been added to state that excess ethics continuing education hours accumulated during any license term may not be carried forward to the next license term and pursuant to Section 2188.6(g), no course shall be taken for credit more than once within a two (2) year license term.

The language is necessary because this is a per term (two-year) requirement; therefore, no carryover will be allowed. For example, if a carryover were allowed, the agent-broker could complete enough ethics training to cover four (4) years or two (2) license terms. That is not the intent of imposing the ethics training requirement.

NOTE: Section 2188.6

California Insurance Code Sections 1749.31, 1749.8 and 10234.93(a)(4) have been added as reference. The change to include Sections 1749.31 and 1749.8 is necessary to reflect the more recent enactment of personal lines broker-agent continuing education requirements to the California Insurance Code, as well as training requirements for life agents selling annuities. The change to include Section 10234.93(a)(4) is necessary because of the training requirements set forth for selling long-term care insurance.

Section 2188.8. Certificates of Completion.

Section 2188.8(a)

The word "training" has been added. This addition is necessary because of the training requirements set forth in California Insurance Code Sections 1749.8 and 10234.93(a)(4), referring to life agents who sell annuities and for those who sell long-term care insurance. Thus, when an individual completes the above-referenced training, it will be mandatory that the approved provider issue a certificate of completion for successful completion of the training course.

Section 2188.8(a)(5)

A minor change has been made for grammatical purposes.

Section 2188.8(a)(6)

A minor change has been made for grammatical purposes.

Section 2188.8(a)(7)

New language is added which mirrors language from Section 2188.8(d), which has been deleted. Additionally, Sections 1749.31, 1749.8 and 10234.93(a)(4) have been added. It is necessary to add Section 1749.31, because this section was enacted after these regulations were originally promulgated. It is necessary to add Sections 1749.8 and 10234.93(a)(4) because of the addition of “training” in Section 2188.8(a) pertaining to certificates of completion. Section 2188.8(d) has been deleted and moved, with the additions stated above, for clarity and consistency reasons.

Section 2188.8(b)

Subdivision 2188.8(b) has been reorganized and is now divided into four (4) new paragraphs. Existing 2188.8(b)(1) – (b)(6) has been renumbered and incorporated into new 2188.8(b)(4)(i) – (vi). This change is necessary for clarity.

New 2188.8(b)(1) adds language that the preclicensing roster is to be submitted within ten (10) business days following the completion of the course. This language is necessary because the ten (10) day requirement will eliminate the student’s obligation to bring in or mail in their Preclicensing Certificates, which will allow the Commissioner to issue an applicant’s license sooner. The Department’s intent in shortening the reporting period for preclicensing is to move to a paperless system using the Online Application, which will allow more accurate information to be collected. Currently, the Department accepts paper certificates from students and has no method to detect fraudulent certificates. In the paperless process, the submission of the online roster will assist those students who pass the qualifying examination in a timely manner by having the preclicense roster information on file. A 30-day period to report preclicensing rosters may hold up the issuance of the license.

New 2188.8(b)(2) mirrors language in existing 2188.8(b), but specifies that it applies to the continuing education roster. This language is necessary because there is now a difference in time between preclicensing rosters and continuing education rosters.

New 2188.8(b)(3) imposes a requirement that the roster shall be submitted through an electronic filing method which can include, but is not limited to, the Department’s Web site, electronic flat file, diskette, compact diskette (CD), or digital versatile disc (DVD). Additionally, specific requirements for submitting rosters using one of the methods noted above will be provided by the education unit. Notices will be sent to all education providers highlighting the regulation changes and listing

implementation dates. This language is necessary because with the activation of the online application and many of the Department's functions becoming automated, the receipt of the Prelicensing Rosters facilitates the desire to move to a paperless system. The Department is already offering Education Providers an on-line program for submitting provider rosters. By accessing a secure Web site, a provider can enter a provider roster; this saves time for both the provider and the agent. Once the provider roster is submitted to the Department, the information will be available to viewers within 24 hours on the Department's Web site. The On-Line Roster service assists Education Providers in reporting their provider rosters for continuing education courses. Upon submission, the provider roster information is validated and the provider is notified immediately if the information has been accepted or if there was an error in the validation. If the provider roster fails to validate, an error message will indicate the reason. Many providers are already utilizing this method.

New 2188.8(b)(4) incorporates language from existing 2188.8(b); however, there is now a caveat: submission of a typed hard copy form (446-13), [Provider Roster) Rev. 8/01], will only be accepted under special circumstances previously approved by the Department. This language is necessary to facilitate the electronic filing method of rosters, as described above. It is the Department's intent to shift to a paperless system.

Section 2188.8(d)

Section 2188.8(d) is deleted and is moved to 2188.8(a)(7) for clarity and consistency purposes.

IDENTIFICATION OF STUDIES AND REPORTS

The Department of Insurance did not rely upon any technical, theoretical, and/or empirical study, report or similar document in proposing these regulations. Rather, it relied on the extensive data and experience of the Department's Licensing Services Division (Producer License Bureau, Education Section), its Legal Division, and its Curriculum Board. The Department also considered input received from various education providers, including comments and testimony received at a pre-notice public discussion, described below.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations would not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

The Commissioner has determined that no reasonable alternative exists to carry out the purpose for which the regulations are proposed. However, any alternatives suggested to the Department during the public comment period will be considered and addressed in the Final Statement of Reasons.

ECONOMIC IMPACT ON BUSINESS

The Commissioner has made an initial determination that the proposed amendments will not have a significant economic impact on businesses. Education providers will have an option to offer ethics courses and/or combination courses; this is not a mandatory requirement. In addition, the majority of the education providers are already utilizing the electronic filing procedure, which has been in place for some time.

With regard to agents and brokers, the new ethics continuing education requirement is part of, and not in addition to, the existing continuing education requirements. Additionally, taking a combination course is an option and is not mandatory. Thus, there will not be an impact on these businesses.

The Commissioner invites interested parties to comment on whether the proposed regulations will have a significant adverse economic impact on business.

PRE-NOTICE DISCUSSIONS

The Commissioner conducted pre-notice public discussions pursuant to Government Code Section 11346.45(a) on October 14, 2004. Interested and affected parties were given an opportunity to present statements or comments with respect to the proposed amendments. The Commissioner considered these statements and comments and no changes were made to the proposed amendments in response to the statements or comments presented at the pre-notice hearing.